

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

MICHAEL BOURQUE ET AL.,

Defendants.

Crim. No. 13-CR-10164-WGY

AFFIDAVIT

I, Michael I. Yoon, being duly sworn, depose and state as follows:

1. I am an Assistant U.S. Attorney for the District of Massachusetts, and the lead prosecutor assigned to the above-captioned case and investigation against Michael Bourque and his 14 co-Defendants.
2. On March 4, 2014, the Court ruled that a pretrial hearing would be necessary to resolve Defendant MARK NEWTON's Motion to Suppress. The government was ordered to prepare and submit affidavits and documents necessary to create an evidentiary basis for the explanation of the timing in sealing of intercepted communications.
3. Pursuant to the Court's Order, the government offers this affidavit.

(508) 202-8114 -- "Target Telephone #3"

4. On February 14, 2013, the Honorable Judge George A. O'Toole, Jr. signed an Order and authorized the interception of communications over (508) 202-8114 ("TT#3"), which was one of Bourque's cellular telephones. Interception of TT#3 began on February 14, 2013, was authorized for 30 days, and terminated on Friday, March 15, 2013, at 11:59 p.m.

5. Pursuant to 18 U.S.C. § 2518(8), at 3:18 pm on Friday, March 15, 2013 (approximately eight hours prior to termination of interception over TT#3), I sent an email to Paul Lyness, Deputy Clerk to Judge O'Toole. The purpose of the email to Deputy Clerk Lyness was to inform the Court that interception would end that evening and the recordings would be available thereafter for sealing:

AUSA (3/15/2013 at 3:18 pm)	The interception of wire and electronic communication for 781-645-2255 (TT2) and 508-202-8114 (TT3) will end this evening (Friday, March 15, 2013). Could you please let me know when we can schedule a time next week to seal the disks with you and Judge O'Toole?
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DC (3/15/2013 at 4:06 pm)	Will let you know[.]
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AUSA (3/15/13 at 4:15 pm)	Thank you sir. Have a great weekend.
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6. On Monday, March 18, 2013, I received no communications from Deputy Clerk Lyness.

7. On Tuesday, March 19, 2013, at 10:48 am, I again emailed Deputy Clerk Lyness. Due to weather reports forecasting heavy snowfall and potentially icy road conditions for the case agents, I asked whether sealing of the recordings could be scheduled for Wednesday, March 20, 2013. Deputy Clerk Lyness suggested 3 pm on Wednesday, March 20, 2013, and subsequently asked whether the time could be moved to 2:30 pm:

AUSA (3/19/13 at 10:48 am)	Given the weather today, would sometime tomorrow (Wednesday) work for you and the Judge to seal the wire?
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DC (3/19/13 at 10:58 am)	How about 3 tomorrow?
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AUSA (3/19/13 at 11:04 am)	Perfect. Thanks Paul.
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DC (3/19/2013 at 11:14 am)	How about 2:30 tomorrow. Better for us[.]
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AUSA (3/19/13 at 11:44 am)	We'll see you at 2:30 pm tomorrow. Thanks very much.
DC (3/19/13 at 11:46 am)	[C]ome to the courtroom.
AUSA (3/19/13 at 11:47 am)	Will do.

8. The Blue Ray disk containing the intercepted communications over TT#3 was sealed with the court on March 20, 2013.

(508) 283-0340 & (508) 250-6630
Sealing of Target Telephones #4 & #5 in April

9. On March 27, 2013, Judge O'Toole signed an Order and authorized the interception of communication over (508) 283-0340 ("TT#4") and (508) 250-6630 ("TT#5"), two additional cellular phones belonging to Bourque. Interception of TT#4 and TT#5 began on March 27, 2013, was authorized for 30 days, and terminated on Thursday, April 25, 2013, at 11:59 p.m.

10. Pursuant to 18 U.S.C. § 2518(8), at 10:36 pm on Friday, April 26, 2013 (approximately ten hours after termination of interception over TT#4 and TT#5), I sent an email to Paul Lyness, Deputy Clerk to Judge O'Toole. The purpose of the email to Deputy Clerk Lyness was to inform the Court that interception had ended the night before and that the recordings were available for sealing:

[T]he 30 days on the previous order expired last night at midnight (technically April 25, 2013 at 12:00 am). So we will need to see you and the Judge about sealing the wires. Can we set up a time next week?

11. The email to Deputy Clerk Lyness contained a typographical error. I indicated that the previous Order had expired on April 25, 2013 at 12:00 am. In fact, the Order had expired on April 25, 2013 at 11:59 pm.

12. For the remainder of April 26, 2013, I received no communication from Deputy Clerk

Lyness.

13. On Monday, April 29, 2013, I again emailed Deputy Clerk Lyness, who replied and scheduled sealing for Tuesday, April 30, 2013 at 11 am:

AUSA (4/29/13 at 11:10 am)	Let me know if you and the Judge have time this week to seal wire disks in 13-mc-91012-GAO. My agent and I can do it Tuesday (anytime) or Wednesday (afternoon).
DC (4/29/13 at 2:10 pm)	Tuesday 4/30/13 (tomorrow) at 11:00. Please come to clerk's office on 2 nd floor, call me and I will take you up to the Judge.

14. On Tuesday, April 30, 2013, in the morning, I accompanied a friend who unexpectedly suffered a severe back injury to his doctor's office. Sealing was re-scheduled for the afternoon:

AUSA (4/30/13 at 9:40 am)	I had to take a friend to the doctor's. Is there a chance we can do the sealing later today or tomorrow afternoon?
DC (4/30/13 at 9:44 am)	How about 2 today? If not, it will have to be later in the week.
AUSA (4/30/13 at 10:09 am)	Can we do 2[]pm please[?] Thanks so much.
DC (4/30/13 at 10:24 am)	2 it is[.]
DC (4/30/13 at 11:29 am)	Something came up on the [J]udge's calendar so he would like to do it at 3[.]
AUSA (4/30/13 at 12:07 pm)	We'll come to the 2 nd floor at 3 pm. Thanks so much.

15. The Blue Ray disks containing the intercepted communications over TT#4 and TT#5 were sealed with the court on April 30, 2013.

(508) 283-0340 & (508) 250-6630
Sealing of Target Telephones #4 & #5 in May

16. On April 25, 2013, before the March 27, 2013 Order for TT#4 and TT#5 expired, interception of TT#4 and TT#5 was again authorized in an Order dated April 25, 2013.

17. The April 25, 2013 Order re-authorizing interception of TT#4 and TT#5 was signed at 7:39 p.m. at the home of the Honorable Judge Timothy S. Hillman. Abiding by the previous Order of March 27, 2013, interception was interrupted at 11:59 p.m. on April 25, 2013, but was re-initiated after several hours on April 26, 2013 pursuant to Judge Hillman's Order.

18. Interception of TT#4 and TT#5 continued on April 26, 2013, and was authorized for 30 days (until May 24, 2013)

19. On May 9, 2013, the DEA conducted a coordinated "take-down," involving the arrest of 15 targets, and the search of six locations and one safety deposit box.

20. Interception terminated on May 9, 2013 at 11 am.

21. After the arrests and searches, the government was involved on Thursday, May 9, 2013 and Friday, May 10, 2013, in the initial Court appearances and determinations of detention for all 15 offenders.

22. Pursuant to 18 U.S.C. § 2518(8), at 5:24 pm on Sunday, May 12, 2013 (approximately three days after termination of interception over TT#4 and TT#5), I sent an email to Paul Lyness, Deputy Clerk to Judge O'Toole. The purpose of the email to Deputy Clerk Lyness was to inform the Court that interception had ended and that the recordings were available for sealing. On Tuesday, May 14, 2013, Deputy Clerk Lyness scheduled sealing of the disks for May 16, 2013:

AUSA (5/12/13 at 5:24 pm) The wiretaps on TT4 and TT5 went down on Thursday, May 9, 2013, at 11 am, after 15 of the target subjects were arrested. Let me know when you and the Judge might have time to see the agent and me to seal the disks.

DC (5/14/13 at 10:32 am) 5/16/13 at 2:00. [C]ome to [the] 2nd floor records room and call me at x-[deletion]. Make sure the agent can make it.

23. The Blue Ray disks containing intercepted communications over TT#4 and TT#5 were sealed on May 16, 2013.

24. The facts and circumstances relating to the sealing of recordings intercepted over TT#3, TT#4, and TT#5 during this investigation; and the email correspondence between Deputy Clerk Lyness and me regarding those sealings; here provided are true and accurate to the best of my recollection and belief.



Michael I. Yoon
Assistant U.S Attorney